



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I – New England
5 Post Office Square - Suite 100
Boston, Massachusetts 02109-3912

BY HAND

April 9, 2013

Wanda I. Santiago, Regional Hearing Clerk
EPA Region 1 – New England
5 Post Office Square, Suite 100 (ORA18-1)
Boston, MA 02109-3912

Re: In Re: New England Boatworks, Inc., EPA Docket No. CAA-01-2013-0022;
Approved Consent Agreement and Final Order

Dear Ms. Santiago:

Please find enclosed for filing the original and one copy of a Consent Agreement and Final Order ("CAFO") resolving the above-referenced enforcement case. Also enclosed is the original and one copy of a certificate of service documenting that, on this date, a copy of the CAFO and this cover letter were mailed to the Respondent's counsel.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in blue ink, which appears to read "Thomas T. Olivier", is written over the typed name.

Thomas T. Olivier, Senior Enforcement Counsel
Regulatory Legal Office
EPA Region 1

Enclosures

cc: Steven M. McInness, Esq.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I – NEW ENGLAND**

IN THE MATTER OF)
)
)
New England Boatworks, Inc.)
)
)
_____)

Docket No: CAA-01-2013-0022

**CONSENT AGREEMENT AND
FINAL ORDER**

CERTIFICATE OF SERVICE


I hereby certify that the foregoing Consent Agreement and Final Order has been sent to the following person on the date noted below:

One Copy by First Class Mail to:

Steven M. McInness, Esq.
38 Bellevue Ave.
Newport, Rhode Island 02840

Dated : 4/9/13

Signed: _____


Thomas T. Olivier, Senior Enforcement Counsel
Office of Environmental Stewardship
U.S. EPA, Region 1
5 Post Office Square, Suite 100
Mail Code OES04-3
Boston, MA 02109-3912

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I – NEW ENGLAND**

IN THE MATTER OF)

New England Boatworks, Inc.)
1 Lagoon Rd.)
Portsmouth, Rhode Island)

Proceeding under Section)
113 of the Clean Air Act)

Docket No: CAA-01-2013-0022

**CONSENT AGREEMENT AND
FINAL ORDER**

CONSENT AGREEMENT

The Complainant, United States Environmental Protection Agency, Region I (“EPA”), alleges that New England Boatworks, Inc. (“NEB” or “Respondent”), violated certain provisions of the Rhode Island state implementation plan (“SIP”). EPA may enforce SIP provisions under Section 113 of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7413.

EPA and Respondent agree to settlement of this matter through this Consent Agreement and Final Order (“CAFO”) without the filing of an administrative complaint, as authorized under 40 C.F.R. § 22.13(b).

EPA and Respondent agree that settlement of this matter is in the public interest and that entry of this CAFO without further litigation is the most appropriate means of resolving this matter.

Therefore, before taking any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the parties, it is hereby ordered and adjudged as follows:

*Consent Agreement and Final Order
Docket No.: CAA-01-2013-0022*

*In the Matter of New England Boatworks, Inc.
Page 1 of 21*

I. PRELIMINARY STATEMENT

1. This CAFO is entered into by the Director, Office of Environmental Stewardship, EPA and Respondent pursuant to Section 113(d)(2)(B) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d)(2)(B), and EPA's "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits," 40 C.F.R. Part 22, including, but not limited to, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).
2. The provisions of this CAFO shall apply to and be binding on EPA and on Respondent, including its officers, directors, successors, and assigns.
3. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this CAFO. Respondent waives any defenses that it might have as to jurisdiction and venue. Respondent consents to the terms of this CAFO.
4. Respondent neither admits nor denies the specific factual and legal allegations below in Section II. For purposes of this CAFO and any action necessary to enforce it, Respondent hereby waives its right to request a judicial or administrative hearing or otherwise to contest the allegations in this CAFO. Respondent waives any right to appeal this CAFO.
5. As provided by Section 113(d)(1)(B) of the Act, 42 U.S.C. § 7413(d)(1)(B), the Debt Collection Improvement Act, 31 U.S.C. § 3701, and EPA's Civil Monetary Penalty Inflation Adjustment Rules, promulgated thereunder at 40 C.F.R. Part 19, EPA may assess a civil administrative penalty of up to \$37,500 per day for each violation of the Clean Air

Act occurring after January 12, 2009.

II. EPA FINDINGS

6. Section 110(a) of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. § 7410(a), requires each state to prepare a SIP incorporating regulations designed to attain and maintain healthy air quality. A state must submit its SIP and any SIP revisions to EPA for approval. Once EPA has approved a SIP, it may enforce the SIP’s requirements and prohibitions pursuant to Sections 113(a) and (b) of the CAA, 42 U.S.C. §§ 7413(a) and (b).
7. The State of Rhode Island has adopted a SIP within the meaning of Section 113(a)(1) of the Act, which has been approved by EPA under Section 110 of the Act, 42 U.S.C. § 7410. The Rhode Island SIP includes various federally approved portions of the Rhode Island Air Pollution Control Regulations (“RI APC Regulations”).
8. NEB constructs and repairs fiberglass recreational boats at its facility located in Portsmouth, RI (“Facility”).
9. NEB was formed as a Rhode Island corporation in 1988.
10. On May 4, 2011, an EPA inspector performed an inspection at the Facility.
11. In March 2012, EPA issued a Reporting Requirement (“RR”) to NEB in order to obtain further information from the company regarding its business structure and Facility operations.
12. In July 2012, NEB submitted a response to EPA’s RR.
13. Based on EPA’s inspection and review of the RR response, EPA has determined that in the process of constructing or repairing vessels at the facility, NEB applies materials

to the surfaces of vessels, including paints, solvents, thinners, and fairing compounds (collectively referred to herein as “coatings”) containing volatile organic compounds (“VOCs”).

14. NEB uses multiple spray guns and other means (such as brushes and rollers) to apply coatings to the hulls and decks of recreational boats. At the time of the inspection NEB employed at least eight employees whose responsibilities included painting.

15. On December 12, 2012, the Complainant issued a Notice of Violation (“NOV”) to Respondent for violations of the Rhode Island State Implementation Plan (“SIP”). The NOV was issued under the authority of Section 113(a)(1) of the CAA, 42 U.S.C.

§ 7413(a)(1), which requires that whenever EPA finds that any person has violated or is in violation of any requirement or prohibition of an applicable SIP, EPA shall notify the person of such finding.

A. Rhode Island Air Pollution Control Regulation 9

16. Under the SIP at RI APC Regulation 9.2.1, no person may construct, install or modify, or cause the construction, installation, or modification of any stationary source subject to RI APC Regulation 9 without obtaining an air pollution control permit.

17. Under the SIP at RI APC Regulation 9.3.1(g)(1), a minor source permit is required for the construction, installation, or modification of any stationary source or process having the potential to emit one hundred pounds or more per day or ten pounds or more per hour of any air contaminant into the atmosphere through surface coating or spray painting.

18. Under the SIP at RI APC Regulation 9.4.1(b), a major stationary source is a

stationary source that emits or has the potential to emit 50 tons per year or more of VOCs, or a stationary source that makes a physical change if the change would constitute a major stationary source by itself.

19. Under the SIP at RI APC Regulation 9.4.2, a major source permit is required for a new major stationary source or a major modification of VOCs in an ozone nonattainment area such as the State of Rhode Island.

20. Based on the Facility's use of paint spray guns and other means to apply VOC-containing coatings to vessels, the Facility's potential to emit exceeds 10 pounds per hour from its surface coating operations. The Facility's potential to emit also exceeds 100 pounds per day of VOCs from its surface coating operations. Accordingly, the Facility requires an air pollution control permit.

21. Based on the Facility's use of paint spray guns and other means to apply VOC-containing coatings to vessels, the Facility's potential to emit exceeds 50 tons or more per year of VOCs from its surface coating operations. Accordingly, the Facility constitutes a major stationary source of VOCs and requires an air pollution control permit.

22. To date, NEB does not have an air pollution control permit under RI APC Regulation 9. Accordingly, NEB has constructed, installed, or modified the Facility or processes at the Facility without having obtained an air pollution control permit, in violation of RI APC Regulation 9 of the SIP and the Clean Air Act.

23. To date, NEB has failed to employ, and continues to fail to employ, the required air pollution control practices at the Facility such as "best achievable control technology"

("BACT") or "lowest achievable emissions rate" ("LAER"), in violation of RI APC Regulation 9. See RI APC Regulations 9.3.3, 9.4.1 and 9.4.2.

24. To date, NEB has not applied for an air pollution control permit under RI APC Regulation 9. Therefore, NEB continues to operate the Facility without the required air pollution control permit under RI APC Regulation 9.

B. Rhode Island Air Pollution Control Regulation 29

25. Respondent has the potential to emit 50 tons per year or more of VOCs from its surface coating operations at the Facility. Accordingly, Respondent was required to apply for and obtain either a Title V operating permit pursuant to Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), and 40 C.F.R. Part 70, or an emissions cap under the SIP at RI APC Regulation 29.3.

26. To date Respondent had not applied for or obtained either a Title V operating permit or an emissions cap for the Facility in violation of RI APC Regulation 29.3 of the SIP and the CAA. See CAA Section 503(c), 42 U.S.C. § 7661b(c).

C. Rhode Island Air Pollution Control Regulation 19

27. Under the SIP at RI APC Regulation 19.2.1, surface coating facilities for which actual uncontrolled emissions from miscellaneous metal parts and products ("MMP") coating (see RI APC Regulation 19.1.1(d)) have been greater than 15 pounds of VOCs in any one day after December 31, 1989 must comply with RI APC Regulation 19 of the SIP.

28. Under the SIP at RI APC Regulation 19.2.3, an owner or operator of a surface coating facility whose emissions are below the applicability threshold of RI APC

Regulation 19.2.1 must comply with the applicable certification, recordkeeping, and reporting requirements of RI APC Regulation 19.5.1.

29. Under the SIP at RI APC Regulation 19.5.1, any owner or operator of a surface coating line or operation that is exempt from the emission limitations in RI APC Regulation 19.3 because the facility's VOC emissions from all operations in any one of the surface coating categories listed in RI APC Regulation 19.1.1 (a)-(i) have not exceeded 15 pounds per day, must comply with applicable certification, recordkeeping, and reporting requirements.

30. EPA has determined that NEB applied surface coatings that contain VOCs to MMP, and that, at a minimum, NEB has violated, and continues to violate, the certification and recordkeeping requirements of RI APC Regulation 19.5.1 of the SIP.

III. DEFINITIONS

31. "Effective Date" means the date on which the CAFO is filed with the Regional Hearing Clerk.

IV. TERMS OF SETTLEMENT

A. Penalty

32. In light of the statutory factors of Section 113(e) of the Act, EPA has determined that it is fair and proper to assess a civil penalty for the violations described in this CAFO in the amount of \$31,500. Respondent shall pay the penalty of \$31,500 within thirty (30) days of the Effective Date of this CAFO. Respondent shall submit a bank, cashier's, or certified check in payment of this penalty.

33. Respondent shall make payment by submitting a check, to the order of the
"Treasurer, United States of America," in the amount of \$31,500 to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Respondent shall note the case name and docket number of this action (In the matter of
New England Boatworks, Inc., Docket No. CAA-01-2013-00xx) on the check and in an
accompanying cover letter, and shall simultaneously provide copies of the check and
cover letter to:

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (ORA18-1)
Boston, MA 02109-3912

and

Thomas T. Olivier
Senior Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
5 Post Office Square, Suite 100 (OES04-3)
Boston, MA 02109-3912

B. Compliance Measures

34. Respondent shall implement the measures described in Attachment 1, incorporated
herein by reference, which are intended to promote Respondent's compliance with
applicable provisions of the Rhode Island SIP. Respondent shall continue to implement
the measures described in Attachment 1 until the issuance of a final Air Pollution Control

Permit that imposes conditions no less stringent than those contained in paragraphs 1 through 9 of Attachment 1, except that the provisions of paragraphs 3.b, 3.c, 5.c, and 5.d need not be transferred to the Air Pollution Control Permit.

- a. Within 60 days of the Effective Date of this CAFO, Respondent shall apply to the Rhode Island Department of Environmental Management for a Rhode Island Air Pollution Control Permit that incorporates conditions no less stringent than Attachment 1.
- b. Within 30 days of the end of the calendar quarter following the Effective Date of this CAFO, Respondent shall implement the compliance measures described in Attachment 1.
- c. Within 30 days of the end of the calendar quarter following the Effective Date of this CAFO, Respondent shall implement a recordkeeping system that satisfies Attachment 1.
- d. Starting with the second calendar quarter of 2013, within 30 days of the end of each calendar quarter, for the next four (4) quarters, Respondent shall submit a quarterly implementation report of compliance with Attachment 1, in accordance with Paragraph 40 of this CAFO.
- e. Within 30 days of one year after the Effective Date of this CAFO, and within 30 days of two years after the Effective Date of this CAFO, Respondent shall submit a report to EPA, in accordance with Paragraph 40 of this CAFO, describing Respondent's efforts under Attachment 1

to reduce VOC and HAP emissions from solvent/thinner usage and coating usage (including the use of non-compliant coatings) at its Facility, as well as Respondent's publication and outreach efforts to educate its customers about reducing VOC and HAP emissions from the use of solvent/thinners and coatings at its Facility.

- f. Following the issuance of an Air Pollution Control Permit to Respondent that incorporates conditions no less stringent than those of Attachment 1, Respondent may seek, and the Rhode Island Department of Environmental Management may issue in accordance with its authority, any amendments to the Air Pollution Control Permit that comply with the requirements of the Rhode Island SIP and of the Clean Air Act.

35. Stipulated Penalties for Compliance Measures. Respondent shall be liable for stipulated penalties for actions required in Attachment 1 to this CAFO as follows:

- a. Respondent shall be liable for stipulated penalties in the amount of \$1,000 for every day beyond 30 days after the Effective Date of this CAFO on which Respondent fails to submit an application to the Rhode Island Department of Environmental Management for a Rhode Island Air Pollution Control Regulation 9 permit under Paragraph 1 of Attachment 1 to this CAFO.

- b. Respondent shall be liable for stipulated penalties in the amount of \$1,000 for every day beyond 30 days after the end of the calendar quarter following the Effective Date of this CAFO on which Respondent fails to implement the measures required under Paragraphs 1, 2 and 3 of Attachment 1 to this CAFO, until the issuance of a Rhode Island Air Pollution Control Regulation 9 permit with conditions at least as stringent as those described in Paragraphs 1, 2 and 3 of Attachment 1.
- c. Respondent shall pay a stipulated penalty of \$500 for each day after a quarterly implementation report was originally due under Paragraph 34.e, or for each day after an annual report was originally due under Paragraph 34.f, until the report is submitted.
- d. Following EPA's determination that Respondent is liable for stipulated penalties pursuant to this Paragraph, EPA will send Respondent a written demand for the payment of penalties. All penalties accruing under this Paragraph shall be due and payable to EPA within thirty (30) days of Respondent's receipt of a demand for payment of stipulated penalties, unless Respondent invokes the dispute resolution procedures of this CAFO. All payments shall be made in accordance with the procedures in Paragraph 33 of this CAFO.
- e. EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued under this Paragraph.

- f. The determinations of whether the compliance measures required under Paragraphs 1, 2 and 3 of Attachment 1 to this CAFO have been completed in accordance with the requirements of Attachment 1 shall be made by EPA in the exercise of its reasonable discretion. If EPA determines that the measures required by Paragraphs 1, 2 and 3 of Attachment 1 have not been completed in accordance with the requirements of Attachment 1, EPA shall provide Respondent with a written notice stating the basis for its decision, including a description of the requirements of Attachment 1 that EPA contends were not completed by Respondent.

V. GENERAL PROVISIONS

36. The dispute resolution procedures of Attachment 2 to this CAFO shall be the exclusive mechanism to resolve disputes arising under or with respect to Attachment 1 (Compliance Measures), including stipulated penalties relating to Attachment 1.
37. No other disputes shall be subject to dispute resolution procedures, and such procedures shall not apply to actions by EPA to enforce obligations of Respondent that have not been disputed in accordance with this Section.
38. The stipulated penalties under Paragraph 35 of this CAFO, the civil penalty under Paragraph 32, any interest, and the nonpayment penalties and/or charges as described in Paragraph 39, shall represent penalties within the meaning of Section 162(f) of the Internal Revenue Code, 26 U.S.C. § 162(f), assessed by EPA and shall not be deductible for

purposes of federal taxes, and shall not be deductible for purposes of state or local taxes unless allowed by law.

39. Pursuant to Section 113(d)(5) of the CAA, if Respondent fails to pay any penalty amount it will be subject to an action to compel payment, plus interest, enforcement expenses, and a nonpayment penalty. 42 U.S.C. § 7413(d)(5). Interest will be assessed on the penalty if it is not paid by the due date established herein. In that event, interest will accrue from the date the CAFO was signed by the EPA Regional Judicial Officer, at the "underpayment rate" established pursuant to 26 U.S.C § 6621(a)(2). In the event that the penalty is not paid when due, an additional charge will be assessed to cover the United States' enforcement expenses, including attorneys' fees and collection costs. A quarterly nonpayment penalty will be assessed for each quarter during which the failure to pay the penalty persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of Respondent's outstanding penalties and nonpayment penalties hereunder accrued as of the beginning of such quarter.

40. Notices. Reports and notices required under this CAFO shall be submitted by electronic mail and mailed by postal or courier service, no later than the date specified in this CAFO, to:

Steve Calder, Environmental Engineer
U.S. Environmental Protection Agency, Region 1
5 Post Office Square – Suite 100 (Mail Code OES04-3)
Boston, Massachusetts 02109-3912
Email: Calder.Steve@EPA.gov

In all reports or notices including, without limitation, the quarterly implementation reports,

submitted to EPA pursuant to this CAFO, Respondent shall, by one of its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, the information is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.

41. This CAFO constitutes a settlement by EPA of all claims against Respondent for civil penalties pursuant to Section 113 of the Act for the violations alleged in Section II of this CAFO. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to Federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondent to comply with all applicable provisions of federal, state, or local law. EPA reserves all of its other criminal and civil enforcement authorities, including the authority to seek injunctive relief and the authority to address imminent hazards.

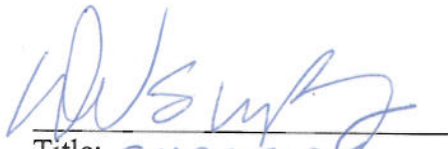
42. Each party shall bear its own costs and fees in this proceeding, including attorneys' fees, and specifically waives any right to recover such costs from the other party pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable law.

VI. AUTHORIZATION

The undersigned representative of the Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Agreement and to execute

and legally bind Respondent to it.

For Respondent:


Title: SECRETARY
New England Boatworks, Inc.

3/26/2013
Date

For Complainant:


Susan Studlien
Susan Studlien, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region I

04/03/13
Date


VII. FINAL ORDER

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the above Consent Agreement, effective on the date it is filed with the Regional Hearing Clerk.

U.S. ENVIRONMENTAL PROTECTION AGENCY



LeAnn Jensen
Acting Regional Judicial Officer
U.S. Environmental Protection
Agency, Region I



Date

**In the Matter of New England Boatworks, Inc.
Consent Agreement and Final Order – ATTACHMENT 1**

1. New England Boatworks ("NEB") shall comply with an overall VOC emission cap of 12 tons per year for NEB's facility, to be satisfied on a 12-month rolling basis, as follows:
 - a. an overall VOC emission cap of 8.0 tons per year from NEB operations; and
 - b. a collective VOC emission cap of 4.0 tons per year from boat owner operations on NEB property.
2. NEB shall comply with an overall single HAP emission cap of 9.9 tons per year and a multiple HAP emission cap of 12 for NEB's facility, to be satisfied on a 12-month rolling basis.
3. NEB shall:
 - a. comply with the VOC-coating limits for pleasure craft described in the Ventura County Air Pollution Control District ("VCAPCD") regulations; the "as-applied" VCAPCD VOC coating limits may be met at NEB's facility on an "as-supplied" basis;
 - b. produce and distribute to customers and boat owners a publication for two years, which is updated on an annual basis, that provides information and recommendations regarding the use of low-VOC (or zero VOC) and low-HAP (or zero HAP) coating alternatives (this Paragraph 3.b need not be a condition of NEB's Regulation 9 permit); and
 - c. submit an annual report to EPA for two years describing NEB's efforts to reduce VOC and HAP emissions from the use of coatings at its facility, as well as NEB's publication and outreach efforts to educate customers and boat owners about reducing VOC and HAP emissions from the use of coatings at its facility (this Paragraph 3.c need not be a condition of NEB's Regulation 9 permit);
4. NEB shall limit facility emissions from non-compliant coating usage to 4,500 pounds per year based on manufacturer's specifications of VOC content for each coating, to be satisfied on a 12 month rolling basis, as follows:
 - a. limit emissions from non-compliant coating usage from NEB operations to 2,000 lbs per year; and
 - b. collectively limit emissions from non-complaint coating usage by boat owners that do work on NEB property to 2,500 lbs per year.
5. NEB shall limit facility emissions from solvent/thinner usage to 4,500 pounds per year based on manufacturer's specifications of VOC content for each solvent/thinner, to be satisfied on a 12-month rolling basis (solvents shipped off site for disposal and non-VOC solvents such as acetone do not need to be included in calculating solvent/thinner emissions), as follows:

- a. limit emission from solvent usage from NEB operations to 3,500 lbs per year;
 - b. collectively limit emissions from solvent usage by boat owners that do work on NEB property to 1000 lbs per year;
 - c. NEB shall produce and distribute to customers and boat owners a publication for two years, which is updated on an annual basis, that provides information and recommendations regarding the use of low-VOC (or zero VOC) and low-HAP (or zero HAP) solvent/thinner alternatives (this Paragraph 5.c need not be a condition of NEB's Regulation 9 permit); and
 - d. NEB shall submit an annual report to EPA for two years describing Respondent's efforts to reduce VOC and HAP emissions from the use of solvents/thinners at its facility, as well as NEB's publication and outreach efforts to educate customers and boat owners about reducing VOC and HAP emissions from the use of solvents/thinners at its facility (this Paragraph 5.d need not be a condition of NEB's Regulation 9 permit).
6. NEB shall use only spray guns with high transfer efficiency (such as high volume low pressure and/or reduced pressure guns);
7. NEB shall use best work practices to minimize VOC emissions from coating applications and clean-up to include at a minimum:
 - a. cleaning procedures that maximize solvent recovery;
 - b. enclosing or sealing solvent rags and wipes;
 - c. minimizing the addition of thinning agents to coatings; and
 - d. keeping the lids of solvent containers closed.
8. NEB shall implement a record keeping system that will record the information necessary to demonstrate compliance. This system must include a methodology for tracking coatings and solvents used by boat owners that do their own work on NEB property;
9. NEB shall implement a record keeping system and certification program that will satisfy the applicable requirements of Rhode Island Air Pollution Control Regulation 19.

Attachment 2

Dispute Resolution

A. Informal Dispute Resolution: Any dispute subject to dispute resolution under this CAFO shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when Respondent provides written notice to EPA describing the nature of the dispute and requesting informal negotiations to resolve it. The period of informal negotiations shall not exceed twenty (20) days beyond the date that EPA receives Respondent's written notice unless EPA and Respondent agree in writing to a longer period. If the parties cannot resolve a dispute by informal negotiations, then the position advanced by EPA shall be considered binding unless, within fifteen (15) days after the conclusion of the informal negotiation period, Respondent invokes formal dispute resolution procedures as set forth below.

B. Formal Dispute Resolution: Respondent shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph A, by providing written notice to EPA containing a statement of position regarding the matter in dispute. The statement of position shall include, but may not be limited to, any factual data, analysis, or opinion supporting Respondent's position and any supporting documentation relied upon by Respondent. Following receipt of Respondent's statement of position submitted pursuant to this Paragraph, EPA will serve on Respondent its statement of position. EPA's statement of position shall include, but may not be limited to, any factual data, analysis, or opinion supporting EPA's position and any supporting

documentation relied upon by EPA.

C. Following receipt of the statements of position submitted by Respondent and EPA pursuant to Paragraph B, the Director of the Office of Environmental Stewardship ("OES Director"), EPA Region 1, will issue a determination resolving the dispute. The determination of the OES Director shall be final. The parties to this CAFO each reserve any rights they may have under applicable law with respect to any appeal from the determination of the OES Director.

D. The invocation of dispute resolution procedures shall not extend, postpone, or affect any obligation of Respondent under this CAFO not directly in dispute, unless the final resolution of the dispute so dictates. Stipulated penalties with respect to the disputed matter shall continue to accrue from the first day of nonperformance, but payment shall be stayed pending resolution of the dispute as provided in this Attachment 2. If Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Paragraph 35 of the CAFO.
